



Department for the
Economy
www.economy-ni.gov.uk

MISCARRIAGE LEAVE AND PAY

PUBLIC CONSULTATION

OCTOBER 2022

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Foreword

The profound grief and sorrow arising from pregnancy loss is something that many expectant parents sadly experience.

I know that most employers will offer compassionate support and understanding to workers or employees who experience such loss. However, unfortunately, not all workers and employees will receive the same level of support and understanding.

I was pleased to take forward the [Parental Bereavement \(Leave and Pay\) Act \(Northern Ireland\) 2022](#), and associated [regulations](#), which established the right for eligible working parents in Northern Ireland to take paid statutory parental bereavement leave following the death or stillbirth of a child.



As this Act was passing through the Assembly, it was recognised how important it is that workers and employees who experience pregnancy loss through miscarriage should also be able to avail of support. The Act, therefore, allows my Department to make regulations to further extend this support so that those who need to take paid bereavement leave during such a time of great need can do so.

It is my firm intention to introduce regulations as soon as possible to address this gap and ensure that eligible workers and employees in Northern Ireland who find themselves in the heart-breaking circumstances of pregnancy loss as a result of miscarriage will also be able to take paid statutory parental bereavement leave. I am proud to say that Northern Ireland will be the first UK region to introduce such an entitlement.

Furthermore, I intend for this right to be a day 1 right with no minimum period of employment necessary before the statutory payment can be made. Similarly, I intend to extend the same day 1 entitlement to those working parents availing of parental bereavement pay following a stillbirth or the death of a child, thereby removing the 6 month qualification period currently in effect.

These measures will in no way compensate for the loss and grief of a person who experiences a miscarriage. Hopefully, in some small measure, they will enable any worker or employee availing of the safeguards and support offered, to start their grieving process without the burden of additional financial concerns.

Thank you for considering this public consultation on an issue of such importance.

GORDON LYONS MLA
OCTOBER 2022

Purpose of this Consultation

This consultation seeks to inform the public about the Department's intention to incorporate miscarriage leave and pay into the entitlements which came into force in Northern Ireland following the introduction of the Parental Bereavement Leave and Pay Regulations on 6 April 2022. We are seeking views from individuals and organisations on these provisions by posing a number of specific questions.

Enquiries to:

To be opened by the addressee only:
Miscarriage Leave and Pay Consultation Team
Department for the Economy
Adelaide House
39-49 Adelaide Street
Belfast, BT2 8FD
Email: MLPconsultation@economy-ni.gov.uk
Web: www.economy-ni.gov.uk/miscarriage-leave-pay

This consultation is relevant to: workers, employees and employers; groups representing workers, employees and employers; groups involved in bereavement care; and legal, HR and payroll professionals.

The consultation will open for responses on 24 October 2022 for an 8 week period. Responses should be received no later than 5pm on 19 December 2022.

Consultation Process

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to the Miscarriage Leave and Pay Consultation Team at MLPconsultation@economy-ni.gov.uk or to the Departmental Complaints Officer at DfEmail@economy-ni.gov.uk. Details of the Department's Complaint Process can be found at:

[Customer Service Complaints Procedure](#)¹

¹ [Customer Service Complaints Procedure \(economy-ni.gov.uk\)](#)

Impact Assessments

Equality Screening, Regulatory and Rural Impact Assessments have been conducted for this policy proposal. Currently we do not anticipate the policy to result in any adverse impacts for any of the section 75 categories or those who live in rural areas. If any potential issues are raised as part of this consultation process, we will review our impact assessments at that stage and amend if required.

Our initial regulatory impact assessment will be reviewed at regulation drafting stage when we can assess in more detail the regulatory impact of the policy proposal.

The Equality and Regulatory documents are available on the [Department for the Economy website](#)².

Confidentiality and data protection

A summary of all responses will be placed on the department's website on the dedicated page for the [miscarriage leave and pay consultation](#). This will include a list of the organisations that respond but will not include the name of the person responding on behalf of an organisation. This summary may also include excerpts of responses received from organisations and anonymised excerpts from individuals which add context to the consultation subject matter. It will not include names or addresses of individuals.

Information provided in response to this consultation, may be subject to publication or disclosure under access to information legislation (primarily the Data Protection Act 2018/the General Data Protection Regulation 2018, and the Freedom of Information Act 2000).

For this reason, you should identify in your response any information you do not wish to be disclosed and explain why this is the case. Please note that an automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

If we receive a request for disclosure of this information, we will take full account of your explanation as well as our policy on processing sensitive personal information, this will be considered in line with our statutory obligations.

For further information about how we process your personal data, please see our Privacy Notice in Annex A.

2 [Miscarriage leave and pay consultation \(economy-ni.gov.uk\)](#)

How to Respond

When responding please indicate whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form.

Your response will be most useful if it is framed in direct response to the questions asked, though further comments and evidence are also welcome.

We would encourage you to complete your response [here on our dedicated consultation page](#)³. However, a consultation response form is also available for download on the [Department for the Economy website](#). Any hard copy responses should be clearly marked 'To be opened by the addressee only'.

Alternative format and additional copies: Please contact us if you require the consultation paper in an alternative language and/or format. You may make copies of the consultation paper without permission. **The consultation paper contains public sector information licensed under the Open Government Licence v3.0.**

3 [Miscarriage leave and pay consultation \(nidirect.gov.uk\)](#)

Introduction and Overview

For the purpose of this consultation, the term ‘miscarriage’ refers to an unintentional miscarriage. There is no central recording of pregnancy loss numbers or rates in Northern Ireland. Estimates are often used and applied to population figures as not all pregnancy losses will be known to healthcare providers. Pregnancy loss may also be recorded on a number of different information systems. According to the NHS, it is estimated that, amongst people who know they are pregnant, about 1 in 8 pregnancies will end in miscarriage⁴. In a Northern Ireland context this would mean that approximately 3000 miscarriages occur each year.

The Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (the 2022 Act) and the subsequent regulations introduced a statutory entitlement to 10 days parental bereavement leave, together with a statutory payment for eligible working parents who experience a stillbirth from the twenty-fourth week of pregnancy, or the death of a child under the age of 18.

Presently, these entitlements do not extend to those who experience a miscarriage up to the end of the twenty-third week of pregnancy.

The 2022 Act also places a statutory obligation upon the Department for the Economy (the Department) to consider modifying and applying the regulations which entitle a working parent to paid leave following the death of a child or a stillbirth to those who have experienced a miscarriage up to the end of the twenty-third week of pregnancy.

We therefore propose to extend the same level of statutory entitlement, protections and safeguards to those workers and employees who experience a miscarriage as that presently afforded to working parents who experience stillbirth or the death of a child. This will include pregnant women and their partners. We will establish through regulations the minimum level of statutory entitlement, safeguards and protections that workers and employees in these circumstances can expect to receive.

The regulations and supporting guidance will clearly define important matters such as:

- Eligibility;
- How and when miscarriage leave can be taken;
- The duration of miscarriage pay entitlement;
- The notice to be given to an employer; and

4 [Miscarriage](#)

- Establish what evidence may be required to demonstrate an entitlement to take miscarriage leave and/or pay.

We intend for these rights to be a day 1 entitlement. This means that there will be no qualifying period before an eligible worker or employee can avail of parental bereavement leave and/or pay following a miscarriage.

As with existing parental bereavement pay, there will be a minimum qualifying earnings threshold. This is currently £123 per week. We also intend to remove the existing 6 month qualifying period for parental bereavement pay entitlements in the case of stillbirth and the death of a child, bringing all parental bereavement entitlements into line as a day 1 right. For those workers and employees claiming the pay element as a day 1 right, the regulations will make provision for how eligibility is to be determined.

Northern Ireland will be the first region of the United Kingdom to place such miscarriage protections and entitlements for workers and employees who experience a miscarriage on a statutory footing, and one of the first countries in the world to do so.

The following pages explain the policy position of the Department with regard to extending parental bereavement leave and pay to include those workers and employees who experience a miscarriage up to the end of the twenty-third week of pregnancy and pose a number of specific questions on which the Department is seeking views. You should consider the detail contained in this document before responding to the consultation. Your responses will help finalise the policy position which will inform the drafting of future regulations.

Eligibility

The legal and medical framework through which miscarriage, stillbirth and the death of a child is explained and given definition can sometimes seem quite cold and clinical and this can be especially difficult for those who have suffered and experienced parental bereavement through a miscarriage up to the end of the twenty-third week of pregnancy, stillbirth following the start of the twenty-fourth week of pregnancy or child death.

The purpose of expanding existing parental bereavement leave and pay regulations to encompass unintentional miscarriage is not to redefine existing definitions or descriptions of pregnancy loss or parental bereavement. Existing definitions are too complex, varied, and widespread across the legal and medical framework to attempt to do so, and the powers that are contained within the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 would prevent us from doing so.

We believe that the existing conditions within parental bereavement leave and pay regulations which give definition and set entitlement should therefore be modified to extend to workers and employees who have experienced a miscarriage up to the end of the twenty-third week of pregnancy.

Eligibility

- 1** Do you agree that the existing conditions within parental bereavement leave and pay regulations which give definition and set entitlement should be modified to extend to workers and employees who have experienced a miscarriage up to the end of the twenty-third week of pregnancy?

Duration of Miscarriage Leave and Pay and how and when it can be taken

It is important to strike the right balance between allowing as much flexibility as possible for workers and employees who experience a miscarriage with varying needs to grieve, and the need for employers to have a degree of certainty over when and how their workers and employees can take parental bereavement leave and/or pay following a miscarriage.

Existing Parental Bereavement Leave and Pay legislation provides eligible bereaved parents with two weeks statutory paid leave and allows bereaved parents to decide to take the two weeks consecutively or non-consecutively over a period of 56 weeks from the date of a stillbirth or the death of a child.

We propose that leave and pay entitlements should operate in the same manner for workers and employees who experience a miscarriage.

Duration of Miscarriage Leave and Pay and how and when it can be taken

2 Do you agree that miscarriage leave and pay entitlement should be two weeks, which can be taken at any time within 56 weeks from the date of a miscarriage as single weeks or as a two-week block?

Notice required to take Miscarriage Leave and Pay

Miscarriage can be sudden and unpredictable and the sense of loss is highly personal and subjective. Most workers and employees who experience a miscarriage will, understandably, need immediate time away from work. Some may need or wish to take time off later on or to take a combination of 'immediate' and 'later' leave, depending upon personal circumstances and individual needs.

It may not always be practicable for a worker or employee to notify their employer of their intention to take miscarriage leave and pay in the initial period following their loss.

However, there is a need to balance flexibility for workers and employees with the needs of employers who may require a degree of certainty about a worker or employee's intention to be absent in order to allow for adequate planning and cover.

We propose applying the same notice requirements in the event of a miscarriage as is presently required under existing parental bereavement leave and pay legislation.

Existing parental bereavement leave and pay regulations have a notice requirement of at least one week if an employee wishes to take leave and pay after the first 8 weeks of bereavement.

Our proposed notice period for taking parental bereavement miscarriage leave and pay is detailed below:-

Notice Period

A worker or employee will have 56 weeks during which to receive parental bereavement miscarriage pay. A worker or employee will have 28 days, beginning on the first day the payment is to be made in respect of or as soon as is reasonably practicable thereafter, to advise their employer they wish to receive this payment.

An employee will have 56 weeks during which to take parental bereavement miscarriage leave. This will start from the date of the miscarriage.

The 56 weeks is split into 2 periods:

- from the date of the miscarriage to 8 weeks later; and
- between 9 and 56 weeks after the date of the miscarriage.

The two weeks' leave may be taken in one block or as two separate blocks of one week.

The period of notice required depends on when an employee is taking parental bereavement miscarriage leave.

0 to 8 weeks after the miscarriage

An employee must give notice before the time they would normally start work on the first day of the period they want to take off work or, in the case where it is not reasonably practicable for the employee to give such notice, then notice should be given as soon as it is reasonably practicable.

9 to 56 weeks after the miscarriage

An employee must give at least one week's notice before the start of the week or weeks they want to take off work.

Notice required to take Miscarriage Leave and Pay

3 Do you agree that notice requirements for miscarriage leave and pay should mirror existing parental bereavement leave and pay requirements?

Evidence required for Miscarriage Leave and Pay

Existing parental bereavement leave and pay legislation requires that an employee wishing to take paid parental bereavement leave must, when requesting payment, declare in writing that they are entitled to it.

In some instances, miscarriage can occur before a pregnancy has been medically confirmed. It is acknowledged that medical support may not be obtained in the event of every miscarriage.

An evidential requirement would apply equally to the pregnant woman and their partner, and therefore potentially involve the sharing of sensitive personal medical information which may cause additional upset and distress. In order to lawfully process sensitive medical information, administrative costs may be incurred by employers.

We seek your views on whether it is desirable, in all the circumstances, to require medical evidence for eligibility to be provided by a person intending to claim miscarriage leave and/or pay.

Evidence required for Miscarriage Leave and Pay

4 Do you agree that it should be a requirement for a person intending to claim miscarriage leave and/or pay to provide medical confirmation of a miscarriage up to the end of the twenty-third week of pregnancy?

Statutory provision for payment and day 1 entitlement

Existing parental bereavement pay (for 2022) is paid at a statutory rate of £156.66 or 90% of weekly earnings (whichever is lower).

Presently, in order to be eligible to receive the statutory payment, a worker or employee must have at least 26 weeks continuous employment, known as a qualifying period.

It is our intention to remove this existing 26-week qualifying period so that parental bereavement pay for stillbirth and child death becomes a day 1 entitlement. In addition, it is our intention that miscarriage pay will also be a day 1 entitlement.

This would mean, for example, that a worker or employee who recently commenced employment would have the same entitlement to receive the statutory payment as a longer serving colleague.

Statutory provision for payment and day 1 entitlement

5a Do you agree that the statutory payment for miscarriage should be the same as that which is paid for stillbirth and child death?

Statutory provision for payment and day 1 entitlement

5b Do you agree that workers and employees should be entitled to statutory parental bereavement pay for miscarriage, stillbirth and child death from the first day of their employment?

Additional Information

You may provide additional information or clarification to any response made at question 6 of the consultation question section.

Consultation Questions

P1 Your name

P2 Your email address

P3 Are you:

- An individual
- An employer
- Representing a trade union
- Representing an industry or employer association
- Representing a charitable or community and voluntary organisation
- Other (please specify)

P4 **For employers and organisations only:** Please provide the name of your company or organisation

- Please indicate if you are content for the name of your organisation to be listed in an Annex to the Departmental Response? The Annex will list the name of the business or organisation, but not the person who responded on its behalf.

P5 If you are an individual, are you:

- Employed
- Self-employed
- Unemployed
- Retired
- Not looking for work
- Other

P6 If you are in employment, what type of organisation do you work for?

- Private sector organisation
- Public sector
- Charity/voluntary sector
- Other

P7 If you are in employment, how many people work for your organisation?

- Micro-business (0-9 employees)
- Small business (10-49 employees)
- Medium-sized business (50-249 employees)
- Large business (250+ employees)

P8 If you are an employer, how would you classify your organisation?

- Private sector
- Public sector
- Charity/voluntary sector
- Other (please specify)

P9 If you are an employer, how many employees work for your organisation?

- Micro-business (0-9 employees)
- Small business (10-49 employees)
- Medium-sized business (50-249 employees)
- Large business (250+ employees)

Eligibility

1) Do you agree that the existing conditions within parental bereavement leave and pay regulations which give definition and set entitlement should be modified to extend to workers and employees who have experienced a miscarriage up to the end of the twenty-third week of pregnancy?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Duration of Miscarriage Leave and Pay and how and when it can be taken

2) Do you agree that miscarriage leave and pay entitlement should be two weeks, which can be taken at any time within 56 weeks from the date of a miscarriage as single weeks or as a two-week block?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Notice required to take Miscarriage Leave and Pay

3) Do you agree that notice requirements for miscarriage leave and pay should mirror existing parental bereavement leave and pay requirements?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Evidence required for Miscarriage Leave and Pay

4) Do you agree that it should be a requirement for a person intending to claim miscarriage leave and/or pay to provide medical confirmation of a miscarriage up to the end of the twenty-third week of pregnancy?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Statutory provision for payment and day 1 entitlement

5a) Do you agree that the statutory payment for miscarriage should be the same as that which is paid for stillbirth and child death?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

5b) Do you agree that workers and employees should be entitled to statutory parental bereavement pay for miscarriage, stillbirth and child death from the first day of their employment?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Additional information

- 6) Please use the space below if you wish to provide any additional comments about any aspect of this consultation.

Please note, we may choose to take and anonymise excerpts from comments by individuals made in the additional comments text box below. You are not required to provide further information in this box or any personal information.

Excerpts from responses made on behalf of organisations may be published in a future departmental response unless the organisation makes it clear they do not wish for this to happen.

- If you are responding as an individual, please indicate here if you are content with anonymised extracts from the box above to be included in the published Departmental response.

- If you are responding on behalf of an organisation and have confirmed you are content for the name of your organisation to be listed in an Annex to the published departmental response, please indicate here that you are content with extracts from the box above to be included in the published Departmental response.

Hard-copy responses

Please mark your envelope as “**To be opened by the addressee only**” and post to –

Miscarriage Leave and Pay Consultation Team

Department for the Economy

Adelaide House

39-49 Adelaide Street

Belfast, BT2 8FD

For Email responses, please forward your completed form to:

Email: MLPconsultation@economy-ni.gov.uk

Annex A

Privacy Notice

Data Controller Name: Department for the Economy
Business Area: Miscarriage Leave and Pay Consultation Team
Address: Adelaide House, Adelaide Street, Belfast, BT2 8FD
Telephone: 02890416728
Email: MLPconsultation@economy-ni.gov.uk

Why are you processing my personal information?

The Department is required by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 to incorporate miscarriage into the existing Parental Bereavement Leave and Pay rights and entitlements that are available to employees and workers that meet the qualification criteria. The Department is therefore initiating a consultation to inform and further develop this policy. The results and feedback gained through this consultation will inform a series of amendments to the existing legislative framework for Parental Bereavement Leave and Pay to ensure that the incorporation of a miscarriage entitlement for Parental Bereavement Leave and Pay is fit for purpose and supports those employees and workers that meet the new criteria.

The information we collect from you will inform and further develop this policy.

The lawful basis for processing your personal data is that of legal obligation and public task in accordance with:

- Section 8 and Paragraph 6 of Part 2 of Schedule 1 to the Data Protection Act 2018;
- Article 6(1)(c) of the UK GDPR (the processing is necessary for you to comply with the law); and
- Article 6(1)(e) of the UK GDPR (the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law
- Article 9(2)(g) of the UK GDPR (processing is necessary for reasons of substantial public interest)

What categories of personal data are you processing?

Your name, your e-mail address, employment status.

As part of the consultation response, you will be asked if you are responding as an individual or on behalf of an organisation. This includes trade unions, but we will not ask you if you are a member of a trade union.

The consultation will also enable you to provide additional information in support or clarification of your response, this may include special category data, e.g. personal health information, religious or philosophical beliefs, or political opinions, etc., however, please note this information is not a requirement.

Where do you get my personal data from?

You will provide us with your personal data when responding to the public consultation.

Do you share my personal data with anyone else?

DfE is using the following data processor to help it deliver this consultation: Digital Transformation Services (DTS) within Department of Finance. We have contracts in place with them which means that they cannot do anything with your personal information unless we have instructed them to do it.

We may choose to take excerpts and examples from comments that are made in the additional comments text box which will be provided in the consultation, you are not required to provide further information in this box or any personal information. If you choose to make additional comments, including personal information, where it is possible to anonymise this information for publication in the Departmental Response, we will do so.

Where you have stated that you do not wish for your information to be shared, In some circumstances, DfE is legally obliged to share information, for example with the Police Service of Northern Ireland. We might also share information with regulatory bodies, for example, NI Audit Office, in order to further their, or our, objectives. In any scenario, DfE will satisfy itself that it has a lawful basis on which to share the information and document its decision-making.

If you are responding on behalf of an organisation, unless you request otherwise, we will include the name of the organisation in an annex to the Departmental response to the consultation – we will not share your name.

In any event if we need to share outside of the above it will only be after a thorough data protection assessment to ensure that this is fully compliant with data protection law.

Do you transfer my personal data to other countries?

No. Your personal data will not be transferred to other countries.

How long do you keep my personal data?

We will retain your data for a period of 5 years in line with the Department for the Economy Retention and Disposal Schedule after which time it will be destroyed securely.

What rights do I have?

- You have the right to obtain confirmation that your data is being processed, and [access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have the right to [‘block’ or suppress processing](#) of personal data, in specific circumstances
- You have the right to [object to the processing](#), in specific circumstances
- You have rights in relation to [automated decision making and profiling](#)

If these rights are applicable and you wish to exercise these please email DPO@economy-ni.gov.uk

How do I complain if I am not happy?

If you are unhappy with how any aspect of this privacy notice, or how your personal information is being processed, please contact the Department's Data Protection Officer at DPO@economy-ni.gov.uk

If you are still not happy, you have the right to lodge a complaint with the Information Commissioner's Office (ICO).

Contact details for the ICO are available from the [ICO website \(ico.org.uk\)](http://ico.org.uk)